

claim 1.

Applicant respectfully traverses the rejection of dependent claims 3, 5, and 6 and repeats the discussion above for claim 1 in making the traversal.

Furthermore, Applicant respectfully traverses the obviousness rejections employing Hickey et al. as well, since it is respectfully submitted that Hickey et al. teach away from an apparatus to provide volume to the body tissue for adjustable coaptation of a body lumen, as recited in claim 1.

Reconsideration and withdrawal of the anticipation and obviousness rejections are respectfully requested.

CLAIM 8

Applicant respectfully traverses the anticipation rejection of claim 8. It is respectfully submitted that the Hickey et al. does not relate to, among other things, an elongate guide probe member adapted for being inserted into tissue adjacent a body lumen of a patient, an elongate implantable device adapted for being surgically implanted into the tissue adjacent a body lumen, and to expand an expandable element to partially and adjustably restrict the body lumen, as recited in claim 8.

Reconsideration and allowance of claim 8 are respectfully requested.

Rejections based on Haber

Claims 13-17, 19-24, 27-32, 34-37, 39 and 40 were rejected under 35 USC § 102(b) as being anticipated by Haber. Applicant respectfully traverses the rejections in detail as follows:

CLAIMS 13-17, 19-24, and 27

Applicant respectfully traverses the anticipation rejection using Haber. It is assumed that the Examiner is referencing U.S. Patent 4,846,784. Applicant respectfully submits that Haber fails to show, among other things, providing a flowable material from a source into the port portion at the rearward end of the elongate implantable device, as recited in claim 13. In contrast, FIG. 9 appears to show a hypodermic needle delivering directly to balloon 2. See also, Haber, Col. 5, lines 29-57.

Thus, Applicant respectfully submits that Haber fails to anticipate claim 13.

Applicant respectfully repeats the discussion of claim 13 for dependent claims 14-17, 19-24, and 27.

Reconsideration and allowance of claims 13-17, 19-24, and 27 are respectfully requested.

CLAIMS 28-32, 34-37, 39 and 40

Applicant respectfully traverses the rejection of claim 28 under Haber. It is assumed that the Examiner is referencing U.S. Patent 4,846,784. It is respectfully submitted that Haber fails to show, among other things, providing a flowable material at the rearward end from a source into the port portion, so as to expand the expandable element to at least partially restrict the body lumen, as recited in claim 28. In contrast, FIG. 9 appears to show a hypodermic needle delivering directly to balloon 2. See also, Haber, Col. 5, lines 29-57.

Thus, Applicant respectfully submits that Haber fails to anticipate claim 28.

Applicant respectfully repeats the discussion of claim 28 for dependent claims 29-32, 34-37, and 39 and 40.

Reconsideration and allowance of claims 28-32, 34-37, 39 and 40 are respectfully requested.

§103 Rejection of the Claims

Rejections based on Hickey et al.

Claims 2 and 7 were rejected under 35 USC § 103(a) as being unpatentable over Hickey et al. as applied to claim 1 above, and in further view of Whitehouse et al. Claim 4 was rejected under 35 USC § 103(a) as being anticipated by Hickey et al. As applied to claim 1 above, in view of McIntyre et al. Claims 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hickey et al. Claims 11 and 12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hickey et al. As applied to claim 8 above, and further in view of Whitehouse et al. and Salama.

Insofar as Hickey et al. is relied upon for an obviousness rejection, Applicant respectfully traverses the rejection on several grounds. Applicant respectfully traverses the obviousness rejections employing Hickey et al. since it is respectfully submitted that Hickey et al. teach away

from an apparatus to provide volume to the body tissue for adjustable coaptation of a body lumen, as recited in claim 1. It is believed that Hickey et al. relates to maintaining a lumen, as opposed to coaptation of a lumen. Thus, Hickey et al. is believed to teach away from the present subject matter. Furthermore, it is respectfully submitted that the Hickey et al. catheter is unsuitable as an implantable device.

Applicant respectfully repeats the discussions traversing the anticipation of the base claims 1 and 8 in further traversing the obviousness rejections.

Applicant further respectfully traverses the assertions of things “well known” and what “would have been obvious to one of ordinary skill in the art” in the rejections. It is respectfully submitted that the Hickey et al. patent is improperly relied upon and the assertions of what is well known are improper in light of the teachings in Hickey et al. Withdrawal of the assertions is respectfully requested, or a reference to support them is requested in the next official communication pursuant to M.P.E.P. 2144.03.

Reconsideration and withdrawal of the Hickey et al. patent in an obviousness rejection are respectfully requested. Allowance of the claims 2, 7, 4, 9, 10, 11, and 12 is respectfully requested.

Rejections based on Haber

Claims 18 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Haber and further in view of Andino et al. Claim 26 was rejected under 35 U.S.C. 103 (a) as being unpatentable over Haber as applied to claim 13 above, and in further view of Whitehouse et al.

Applicant respectfully repeats the discussions traversing the anticipation of the base claims 13 and 28 in further traversing the obviousness rejections. The differences in the present teachings are believed significant, since they allow for, among other things, filling of the implantable device from a port at a rearward end of the device, in contrast to the practice in Haber.

Applicant further respectfully traverses the assertions of things “well known” and what “would have been obvious to one of ordinary skill in the art” in the rejections. It is respectfully submitted that the Haber patent is improperly relied upon and the assertions of what is well known are improper in light of the teachings in Haber. Withdrawal of the assertions is

respectfully requested, or a reference to support them is requested in the next official communication pursuant to M.P.E.P. 2144.03.

Reconsideration and withdrawal of the Haber patent in an obviousness rejection are respectfully requested. Allowance of the claims 18, 33, and 26 is respectfully requested.

Allowable Subject Matter Noted

Applicant notes that claims 25 and 38 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 612-373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Jan. 2, 2002

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this, 2nd day of January, 2002.

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